

Senate Study Bill 1136

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CO=CHAIRPERSON ZIEMAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the financing by cities of telecommunications
2 projects and facilities, including requirements regarding
3 feasibility studies and reports, requiring sealed bids and
4 city voter approval, prohibiting financing for an amount above
5 projected costs, and increasing the minimum voter approval
6 rate for such projects, and providing effective and
7 retroactive applicability dates.
8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
9 TLSB 2410SC 81
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1 1 Section 1. Section 68B.3, Code 2005, is amended by adding
1 2 the following new subsection:
1 3 NEW SUBSECTION. 3. A person providing services to an
1 4 agency or political subdivision of the state regarding a
1 5 feasibility study for or assisting in the establishment of
1 6 terms of procurement or contract specifications for a
1 7 telecommunications project as defined in section 384.80 shall
1 8 not be awarded the resulting procurement or contract for the
1 9 telecommunications project, regardless of whether the award is
1 10 made through competitive bidding. This subsection shall apply
1 11 to officers, directors, agents, and employees of the person,
1 12 and to any entity in which such persons are officers or
1 13 directors or have an ownership or controlling interest in the
1 14 entity.
1 15 Sec. 2. Section 384.80, Code 2005, is amended by adding
1 16 the following new subsections:
1 17 NEW SUBSECTION. 15. "Telecommunications facility" means a
1 18 system or network of cable, optical fiber, radio, or other
1 19 wireless equipment or technology or any combination thereof,
1 20 or other equipment, items, system, infrastructure, or
1 21 facilities that are used or capable of being used by a city,
1 22 city utility, combined utility system, city enterprise,
1 23 combined city enterprise, or nongovernmental entity or person
1 24 providing telecommunications services.
1 25 NEW SUBSECTION. 16. "Telecommunications project" means a
1 26 project, plan, or proposal for a city, city utility, combined
1 27 utility system, city enterprise, or combined city enterprise
1 28 to directly or indirectly build, lease, or otherwise acquire,
1 29 invest in, maintain, improve, expand, finance, or refinance a
1 30 telecommunications facility not owned or operated by the city,
1 31 city utility, combined utility system, city enterprise, or
1 32 combined city enterprise on or after January 1, 2005.
1 33 NEW SUBSECTION. 17. "Telecommunications services" means
1 34 the same as defined in section 388.10.
1 35 Sec. 3. Section 384.82, subsection 1, Code 2005, is
2 1 amended to read as follows:
2 2 1. a. A city may carry out projects, borrow money, and
2 3 issue revenue bonds and pledge orders to pay all or part of
2 4 the cost of projects, such revenue bonds and pledge orders to
2 5 be payable solely and only out of the net revenues of the city
2 6 utility, combined utility system, city enterprise, or combined
2 7 city enterprise involved in the project. The cost of a
2 8 project includes the construction contracts, interest upon the
2 9 revenue bonds and pledge orders during the period or estimated
2 10 period of construction and for twelve months thereafter, or
2 11 for twelve months after the acquisition date, such reserve

2 12 funds as the governing body may deem advisable in connection
2 13 with the project and the issuance of revenue bonds and pledge
2 14 orders, and the costs of engineering, architectural, technical
2 15 and legal services, preliminary reports, surveys, property
2 16 valuations, estimates, plans, specifications, notices,
2 17 acquisition of real and personal property, consequential
2 18 damages or costs, easements, rights of way, supervision,
2 19 inspection, testing, publications, printing and sale of bonds
2 20 and provisions for contingencies. A city may sell revenue
2 21 bonds or pledge orders at public or private sale in the manner
2 22 prescribed by chapter 75 and may deliver revenue bonds and
2 23 pledge orders to the contractors, sellers, and other persons
2 24 furnishing materials and services constituting a part of the
2 25 cost of the project in payment therefor.

2 26 b. A city may deliver its revenue bonds to the federal
2 27 government or any agency thereof which has loaned the city
2 28 money for sanitary or solid waste projects, water projects or
2 29 other projects for which the government has a loan program.

2 30 c. Notwithstanding any other provision of law, a city,
2 31 city utility, combined city utility, city enterprise, or
2 32 combined city enterprise shall not, in whole or in part,
2 33 finance, refinance, pay the costs or expenses of, or otherwise
2 34 fund a telecommunications project or the operation of a
2 35 telecommunications facility established through a
3 1 telecommunications project, directly or indirectly, through
3 2 issuance or assumption of debt, liability, or obligation, or
3 3 secure or otherwise become contingently liable for a
3 4 telecommunications project or facility except through use of
3 5 the revenues directly earned or to be earned by the
3 6 telecommunications project or facility. This paragraph shall
3 7 not prevent any of the following:

3 8 (1) The use of otherwise available funds to pay the
3 9 reasonable costs of studying the feasibility of a
3 10 telecommunications project or conducting an election on a
3 11 proposal for a telecommunications project.

3 12 (2) The sale to nongovernmental investors of revenue bonds
3 13 to fund a telecommunications project if principal, interest,
3 14 and premium are payable upon maturity or default and are
3 15 actually paid solely from, and all obligations under the bonds
3 16 are secured solely by, the net revenues earned or to be earned
3 17 by the telecommunications project.

3 18 Sec. 4. Section 384.89, Code 2005, is amended to read as
3 19 follows:

3 20 384.89 TRANSFER OF SURPLUS.

3 21 The governing body of a city utility, combined utility
3 22 system, city enterprise, or combined city enterprise which has
3 23 on hand surplus funds, after making all deposits into all
3 24 funds required by the terms, covenants, conditions, and
3 25 provisions of outstanding revenue bonds, pledge orders, and
3 26 other obligations which are payable from the revenues of the
3 27 city utility, combined utility system, city enterprise, or
3 28 combined city enterprise and after complying with all of the
3 29 requirements, terms, covenants, conditions and provisions of
3 30 the proceedings and resolutions pursuant to which revenue
3 31 bonds, pledge orders, and other obligations are issued, may
3 32 transfer such surplus funds to any other fund of the city in
3 33 accordance with any rules promulgated by the city finance
3 34 committee created in section 384.13 if the transfer is also
3 35 approved by the city council, provided that no transfer may be
4 1 made if it for use by a city utility to finance, in whole or
4 2 in part, telecommunications services or if such transfer
4 3 violates section 384.82, subsection 1, paragraph "c", or
4 4 conflicts with any of the requirements, terms, covenants,
4 5 conditions or provisions of any resolution authorizing the
4 6 issuance of revenue bonds, pledge orders, or other obligations
4 7 which are payable from the revenues of the city utility,
4 8 combined utility system, city enterprise, or combined city
4 9 enterprise which are then outstanding.

4 10 Sec. 5. Section 384.90, Code 2005, is amended to read as
4 11 follows:

4 12 384.90 PART PAYMENT FROM OTHER BONDS AND OTHER SOURCES.

4 13 This division does not prohibit or prevent a city from
4 14 using funds derived from the issuance of general obligation
4 15 bonds, the levy of special assessments and the issuance of
4 16 special assessment bonds, and any other source which may be
4 17 properly used for such purpose, to pay a part of the cost of a
4 18 project, except as limited in section 384.82, subsection 1,
4 19 paragraph "c".

4 20 Sec. 6. Section 384.96, Code 2005, is amended by adding
4 21 the following new unnumbered paragraph:

4 22 NEW UNNUMBERED PARAGRAPH. The requirements of this section

4 23 shall apply to a contract for the operation, management, or
4 24 control of a telecommunications facility, as defined in
4 25 section 384.80.

4 26 Sec. 7. Section 388.1, Code 2005, is amended by adding the
4 27 following new subsections:

4 28 NEW SUBSECTION. 1A. "Telecommunications facility" means
4 29 the same as defined in section 384.80.

4 30 NEW SUBSECTION. 1B. "Telecommunications project" means
4 31 the same as defined in section 384.80.

4 32 Sec. 8. Section 388.2, Code 2005, is amended to read as
4 33 follows:

4 34 388.2 SUBMISSION TO VOTERS.

4 35 1. The proposal of a city to establish, acquire, lease, or
5 1 dispose of a city utility, except a sanitary sewage or storm
5 2 water drainage system, in order to undertake or to discontinue
5 3 the operation of the city utility, or the proposal to
5 4 establish or dissolve a combined utility system, or the
5 5 proposal to establish or discontinue a utility board, is
5 6 subject to the approval of the voters of the city, except that
5 7 a board may be discontinued by resolution of the council when
5 8 the city utility, city utilities, or combined utility system
5 9 it administers is disposed of or leased for a period of over
5 10 five years.

5 11 2. The proposal may be submitted to the voters at any city
5 12 election by the council on its own motion. Upon receipt of a
5 13 valid petition as defined in section 362.4, requesting that a
5 14 proposal be submitted to the voters, the council shall submit
5 15 the proposal at the next regular city election.

5 16 3. A city, city utility, combined city utility, city
5 17 enterprise, or combined city enterprise may not establish,
5 18 acquire, or lease the facilities of a telecommunications
5 19 project, in whole or in part, without the approval of the
5 20 voters of the city.

5 21 a. Prior to the city election to obtain voter approval,
5 22 the city shall prepare a report on the feasibility of the
5 23 telecommunications project which shall, at a minimum, address
5 24 and disclose all of the following:

5 25 (1) The costs of establishing, acquiring, or leasing the
5 26 facilities of the telecommunications project and an
5 27 explanation of how those costs will be paid.

5 28 (2) Projected operating costs, including losses, for each
5 29 of the first five years of operation of the telecommunications
5 30 facilities, including costs of necessary upgrades to maintain
5 31 continuing technological viability.

5 32 (3) Projected revenues of the telecommunications project
5 33 for each of the first five years of operation.

5 34 (4) Assumptions used in developing the cost and revenue
5 35 projections.

6 1 (5) Risks associated with the fiscal viability of the
6 2 telecommunications project and its operations, including
6 3 technological, financial, and market risks.

6 4 (6) The fiscal impact on the city of the capital and other
6 5 investment required for the telecommunications project,
6 6 including but not limited to the investment required to
6 7 construct, maintain, and operate the facilities and to avoid
6 8 their technical obsolescence.

6 9 (7) The impact on the city, utility ratepayers, and
6 10 taxpayers if the telecommunications project is not a financial
6 11 success, including the impact on the creditworthiness of the
6 12 city and the alternatives available to the city if the
6 13 telecommunications project is unsuccessful.

6 14 b. The feasibility report shall be reviewed by an
6 15 independent investment banking firm experienced in public
6 16 finance in the telecommunications industry, which shall
6 17 provide a written opinion regarding the reasonableness of
6 18 projections and conclusions in the report. The investment
6 19 banking firm's opinion and the report shall be available as
6 20 public records for public inspection and copying.

6 21 c. Not less than sixty days prior to the date of the city
6 22 election for voter approval, but before the issuance of the
6 23 banking firm's opinion, the city shall hold a public hearing
6 24 regarding the feasibility report. Public notice of the
6 25 hearing shall be given in the manner directed by section
6 26 362.3. Such notice shall inform the public of the
6 27 availability of the feasibility report for inspection and
6 28 copying.

6 29 d. The ballot issue for voter approval of the proposal
6 30 shall include, in addition to any other information required
6 31 by law, a statement of the maximum costs disclosed pursuant to
6 32 paragraph "a", subparagraphs (1) and (2), to establish,
6 33 acquire, lease, maintain, or operate the facilities of the

6 34 telecommunications project as shown in the feasibility report,
6 35 which shall not be exceeded without voter approval in another
7 1 election.

7 2 4. A proposal for the establishment of a utility board
7 3 must specify a board of either three or five members.

7 4 5. If a majority of those voting for and against the
7 5 proposal approves the proposal, the city may proceed as
7 6 proposed, except that a proposal for a telecommunications
7 7 project shall require approval of sixty percent of those
7 8 voting.

7 9 6. ~~If a majority~~ the required affirmative vote of those
7 10 voting for and against the proposal does not approve the
7 11 proposal, the same or a similar proposal may not be submitted
7 12 to the voters of the city for at least four years from the
7 13 date of the election at which the proposal was defeated.

7 14 Sec. 9. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.
7 15 This Act, being deemed of immediate importance, takes effect
7 16 upon enactment, and is retroactively applicable to January 1,
7 17 2005, and is applicable on and after that date.

7 18 EXPLANATION

7 19 This bill relates to the financing of telecommunications
7 20 projects and facilities by a city, city utility, combined city
7 21 utility, city enterprise, or combined city enterprise.

7 22 The bill restricts persons providing services related to a
7 23 feasibility study for a telecommunications project from being
7 24 awarded a contract related to the telecommunications project.

7 25 The bill provides definitions for the terms
7 26 "telecommunications facility", "telecommunications project",
7 27 and "telecommunications services".

7 28 The bill prohibits a city, city utility, or city enterprise
7 29 from financing or funding a telecommunications project or
7 30 operation of a telecommunications facility established through
7 31 a project except through use of the revenues directly earned
7 32 or to be earned by the project. The bill prohibits a city,
7 33 city utility, or city enterprise from transferring surplus
7 34 funds to finance telecommunications services or a
7 35 telecommunications project. The bill provides that the

8 1 provision requiring sealed bids applies to contracts regarding
8 2 a telecommunications facility.

8 3 The bill provides that a city, city utility, or city
8 4 enterprise shall not establish, acquire, or lease
8 5 telecommunications facilities of a telecommunications project
8 6 without voter approval. A feasibility report must be prepared
8 7 concerning the telecommunications project prior to the city
8 8 election to obtain voter approval. The feasibility report
8 9 must contain certain provisions regarding costs, revenues,
8 10 risks, and the fiscal impact on the city. The feasibility
8 11 report must be reviewed by an independent investment banking
8 12 firm. The city shall also hold a public hearing regarding the
8 13 feasibility report prior to the city election to obtain voter
8 14 approval. The ballot issue shall include a statement of the
8 15 maximum cost shown in the feasibility report to establish,
8 16 acquire, or lease the facilities of telecommunications
8 17 projects. The bill prohibits the city from exceeding the
8 18 feasibility report's projected cost without approval by
8 19 another city election. The bill provides that at least 60
8 20 percent of voters must approve the proposal for a
8 21 telecommunications project rather than a simple majority as
8 22 required for other proposals needing city voter approval.

8 23 The bill is retroactively applicable to January 1, 2005.

8 24 LSB 2410SC 81

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